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THE  
TRIALS  
OF  
*William Earl of Kilmarnock,  
George Earl of Cromartie,  
AND  
Arthur Lord Balmerino,*  
FOR  
HIGH TREASON,  
Before the  
House of Peers, at *Westminster Hall*,  
On the 28th and 30th of July, and the  
First of August, 1746.

With an ACCOUNT of  
The Lives, Families, Behaviour, and last  
Dying Words of the Earl of Kilmarnock,  
and Lord Balmerino, who were beheaded on  
Tower-Hill, on Monday, Aug. 18, 1746.

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The Fourth Edition.

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L O N D O N :

Printed for the Proprietor, by R. WALKER, in Fleet-Lane,  
where all Persons may be supplied.  
(Price Six-pence.)

This Tract contains the Whole Judicial Proceedings against the  
abovementioned three Lords; together with a genuine Account of  
the Behaviour of the two Lords who suffer'd, during their Confinement  
in the Tower, and at the House to which they were carried on Tower Hill,  
before they went on the Scaffold, and also their Deportment there.---  
And the Publick may be assur'd that this is the most authentick and  
faithful Relation of the Whole, and every the most minute Circum-  
stance that can possibly be collected; and in this Tract is inserted the  
whole Purport of the Paper which Lord Balmerino read upon the Scaf-  
fold, and which is not to be met with in any other Account.

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2020-21 Academic Year

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and the other two were  
well up in front of us now.  
The last bird seen was an Io



THE  
TRIALS  
OF THE  
Three *Rebel* LORDS,  
at *Westminster*;  
WITH  
An ACCOUNT of the Lives, Beha-  
viour and Dying Words of the Earl  
of *Kilmarnock* and Lord *Balmerino*.

**P**URPOsing to give an Account of the Trials of the three *Scots* Lords, who have been convicted by their Peers, of High Treason; in levying War against his Majesty, and endeavouring to overturn the present happy Establishment in Church and State; it will be necessary, previous thereto, to give some Account of the Manner of their being taken, and the Means by which they were brought to Justice.

To begin with the Lord *Cromartie*; it was observed, that his Lordship was very active for the Rebels, and so powerful in those Parts north of *Inverness*, as to oblige the Lord *Rea* to leave his

Country, being threatened with Fire and Sword, unless his Men would submit; and deliver up their Arms. Hereupon the Lord *Rea* retired by Sea to *Leith*, and good Part of his Men to *Tongue*, where they had the good Fortune to surprize the Crew of the *Hazard Sloop*, which had been before taken by the Rebels. Being afterwards reinforc'd by some of the *Monroes*, and the *Militia of Sutherland*, they engaged the Earl at *Golspry*, and took him, and his Son *Lord M<sup>t</sup>Leod*, &c. Prisoners; as appears by the following Narrative, which was attested by Ensign *Mackay*, and by him delivered to the Earl of *Sutherland*, April 15, 1746.

Ensign *Mackay*, of the Earl of *Sutherland's* Militia, having kept a private Intelligence with some Persons in his Lordship's House at *Dunrobin*, it happen'd, that on the 15th of *April*, the said *Mackay* having got the proper Signal from the Top of the Tower of that House, ran with 26 Men to the Water of *Golspry*, and as the Body of the Rebels, consisting of near 400, had marched some Distance before Lord *Cromartie*, and the rest of the Officers, *Mackay*, with his Party, got between them and the main Body, and, firing briskly on them, first drove back the Officers to *Dunrobin*, where they secured the Gate, and by ringing a Bell on the Tower, sounding a Trumpet, and displaying a white Flag, they gave the Alarm to their Men to return immediately to their Relief. In the mean Time, *Mackay* dispatch'd five Men to call Lord *Sutherland's* Men from the different Corners which they were stationed at, to come to his Assistance, and at the same Time placed the Remainder in three Divisions, so as to divert the Enemy, till the rest should join him, and firing briskly on them in their Return to *Dunrobin*, obliged some to take to a Boat for their Safety, and the rest, perceiving the Militia coming down from the Hills in such Numbers that they despaired of Success, directly made the best of their Way to the little Ferry; but Lord *Sutherland's* Men pursued them so cloze, that by Water and Firing,

ing, they kill'd above 50 of them, and took 165 Prisoners, after which they returned to *Dunrobin*, where *Mackay* directly asked Leave to speak to the Earl of *Cromartie*; which being granted, he told him plainly, that if he did not surrender the House, the Numbers that were without would blow it up, and run all Hazards of their Master's Displeasure; upon which his Lordship asked half an Hour to consider of it. In the mean Time *Mackay* went down Stairs, and told the Guard that was in the House, that it was needless to keep their Arms any longer, as their Officers had surrendered; on which they delivered them to *Mackay*, who put them in the Porter's Lodge, and secured the Key, then got Possession of the Key of the Gate, called in Lord *Sutherland*'s Men, went up Stairs, and told Lord *Cromartie* and the rest of the Officers, that there was no more Time for Delays, so disarmed and took them Prisoners, and brought them to the Camp at *Inverness* two Days after the Battle of *Culloden*.

The Earl of *Kilmarnock* was taken at the Battle of *Culloden*, fighting at the Head of his Regiment; where he had certainly been slain, had he not been seasonably rescued by the Earl of *Ancram*, from the Fury of our Soldiers, who were so exasperated, that they gave the Rebels scarce any Quarter.

The Lord *Balmerino* was delivered up a Prisoner to his Royal Highness the Duke, April the 21st, by Mr. *Grant*, who with 800 of his Followers, brought in their Arms and submitted.

They were all three brought to *London*, and committed to the Tower, and on Monday, June, 23, 1746, the Rt. Hon. the Lord Chief Justice *Lee*, the Rt. Hon. the Lord Chief Justice *Willes*, Sir *Martin Wright*, Sir *Thomas Abney*, Sir *James Reynolds*, Mr. Baron *Clive*, came to the Town-Hall on S<sup>t</sup>. Margaret's-Hill, Southwark, and open'd their special Commission for the Trials of the Rebels; when Sir *William Lee*, Lord Chief Justice of the King's Bench, gave a most learned and excellent Charge to the Grand Inquest; who thereupon withdrew to the

the Three-Tuns Tavern on St. Margaret's Hill, and found Bills for High Treason against William Earl of Kilmarnock, George Earl of Cromartie, and Arthur Lord Balmerino.

The Names of the Gentlemen of the Grand Jury  
were as follow,

Sir William Richardson, of Bermondsey, Knight.  
Sir Abraham Shard, of Kennington, Knt.  
Sir Thomas Hankey, of Clapham, Knt.  
Josias Wordsworth, of Adscomb, Esq;  
Percival Lewis, of Putney, Esq:  
John Copeland, of Camberwel, Esq;  
Charles Hoskins, of Croydon, Esq;  
Joseph Willoughby, of the same Esq;  
John Heathfield, of the same, Esq;  
Samuel Nicholson, of the same, Esq;  
Joseph Cretwick, of Streatham, Esq;  
William Clark, of Southwark, Esq;  
Thomas Bevois, of Bermondsey, Esq;  
Elias Bird, of Rotherhithe, Esq;  
Thomas Tarrant, of Southwark, Esq;  
Edward Stevens, of the same, Esq;  
Henry Robinton, of Wandsworth, Esq;  
Nathaniel Green, of Southwark, Esq;  
Isaac Eels, of Lambeth, Esq;  
John Smith, of the same, Esq;  
Hemmet Richardson, of Bermondsey, Esq;  
Samuel Atkinson, of Croydon, Esq;

The three Indictments against the Lords were drawn up in the following Manner, That he, William Earl of Kilmarnock, &c. not having the Fear of God in his Heart, nor regarding his Duty and Allegiance; but being moved and seduced by the Instigation of the Devil, as a false Traytor against his most Serene, illustriour, and excellent Prince George the second, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c. his supreme, true, rightful and undoubted Sovereign Lord, the cordial Love, and due and true Obe-

Obedience, Fidelity and true Allegiance, which every Subject of our said Lord the King ought to bear, withdrawing, and utterly to extinguish, intending and contriving, and with all his Force purposing and designing, the Government of these Kingdoms to subvert, change, and alter; as also, our said Lord the King to Death, and final Destruction to put and bring, and these Kingdoms into intolerable and miserable Slavery to subdue and inthrall; and to fix on the Imperial Throne of these Realms, a Person called the Prince of *Wales*, in the Time of King *James* the Second, &c. — And the Indictment further chargeth, that he, the said *William Earl of Kilmarnock*, on the 10th Day of November last, in the 19th Year of his present Majesty, did appear, array'd in a hostile Manner, at the City of *Carlisle*, in the County of *Cumberland*, with 3000 Persons and upwards, in a tumultuous and rebellious Manner, with Guns, Swords, Clubs, Staves, and other Weapons, offensive as well as defensive, with Drums beating, Colours flying, Pipes playing, and there being so array'd in a war-like and hostile Manner, levy a cruel War, and took Possession of the said City of *Carlisle*, and the Castle of the same City, being a City and Castle of our Sovereign Lord the King that now is, and the same City did keep, sustain, and defend. And this Indictment is said to be against the King's Peace, his Crown and Dignity, the Duty of their Allegiance, and the Form of the Statute in that Case made and provided, &c.

A *Certiorari* was then awarded out of Chancery to remove the Indictments, in order to their Trials by their Peers; and before the Return of that Writ, his Majesty was pleased to appoint *Philip Lord Hardwicke*, the Lord High Chancellor, to be Lord High Steward for the Trials of the said Peers: And then the Lord High Steward directed a Precept under his Seal to the Commissioners to certify the Indictments were found, and on what Day; The same being certify'd by the Commissioners in

in the special Commission nam'd, That the Indictment was found in *Surrey*, the Lord High Steward mov'd the House to know what Day their Lordships would try the Rebel Peers.

There arose some Dispute in the House, whether these three Peers could be try'd by Indictment, it being the first Precedent; for the Earl of *Gramville* said it was an Innovation and infringing the Privilege of the House of Commons to impeach: But this Debate soon ended, because there is an Act of Parliament now in Force, made in the 7th of *William the Third*, that says, any Peer or Peers may be try'd by Indictment as well as Information.

Then the House came to a Resolution to proceed to the Trials of the Rebel Peers on *Monday the 28th Day of July 1746*.

A Precept being directed by the Lord High Steward to the Lord *Cornwallis*, Constable and Lieutenant of the Tower, to bring the Bodies of the Prisoners to *Westminster-Hall* at Eight o'Clock on the 28th of *July* in the Morning; whither they were carried in three Coaches in the following Order. In the first Coach was the Earl of *Kilmarnock*, attended by *Adam Williamson*, Esq; Deputy Governor of the Tower, and the Captain of the Guard. In the second Coach, was the Earl of *Cromartie*, attended by Capt. *Marshal*; and in the third Coach was the Lord *Balmerino*, attended by Mr. *Fowler*, Gentleman Gaoler, who had the Ax lying before him in the Coach.

Then follows the Order of the Procession of the Lord High Steward.

At 8 in the Morning, *July 28*, the Judges in their Robes, with Garter King at Arms, the Usher of the Black Rod, and the Serjeant at Arms, waited on the Lord High Steward, at his House in *Ormond-street*; Garter in his Coat of the King's Arms, Black Rod having the white Staff, and the Serjeant at Arms his Mace: The three last waited in an Apartment, while the Judges went to the Lord High Steward to pay their Compliments to his Grace.

After

After a short Stay, his Grace came to his Coach in the following Order :

His Grace's 20 Gentlemen, two and two, uncovered.

His Serjeant at Arms and Seal-bearer, both uncovered, one with his Mace, and the other with the Purse.

The Black Rod, with the Lord High Steward's Staff, and Garter King of Arms on his Right Hand, in his Coat of Arms, both uncovered.

His Grace the Lord High Steward, in his rich Gown, his Train bore, followed by the Chief Justices and Judges.

His Grace seated himself on the hinder Seat of the Coach singly, Garter and the Seal-bearer on the other Seat over-against his Grace uncovered, the Black Rod in the Right-Hand Side Boot, with his Grace's white Staff, and his Grace's Serjeant at Arms in the left Boot with his Mace ; his Grace's Gentlemen in the five leading Coaches, and the Judges follow'd his Grace in their own Coaches.

His Grace thus attended, passed through Red-Lion Square, crois Holbourn, down Little and Great Queen-street, Long Acre, St. Martin's-lane, and King-street, with the Judges, &c. to the Old Palace Yard, and so up the Stairs to the House of Peers, through the painted Chamber.

The Peers in their Robes, and the Mace deposited upon the uppermost Wool-sack, his Grace passed on to the Lord Chancellor's Room ; the Staff was not brought within the House of Peers.

His Grace having stay'd there a-while, came into the House again, and Prayers began. Then the Peers were called over, Garter or his Deputy being allowed to come to the Clerks Table to make a List at the same Time of the Peers present ; which done, and the Black Rod being sent to see that the Court in Westminster-Hall, and the Passages to it were clear, and giving an Account to the House that they were so, they proceeded towards Westminster-Hall, thus :

His Grace the Lord High Steward's Gentlemen

Attendants two and two.—Four Clerks of the House two and two.—The two Clerks of the Crown, bearing the Commission of the Lord High Steward.—Masters in Chancery, two and two.—Attorney General.—Judges.—Peers eldest Sons.—Peers Minors.—Four Serjeants at Arms with their Maces, two and two.—The Yeoman Usher of the House of Peers.—The Peers according to their Degrees and Precedency, two and two, (the youngest Barons first) all covered.—Four Serjeants at Arms more, with their Maces, two and two.—His Grace's Seal-bearer and Serjeant at Arms.—The Black Rod and Garter.—The Lord High Steward alone, covered, his Train borne.

The Lords being seated on their Benches, and the Judges and Masters in Chancery below on their Seats; the Lord High Steward making a Reverence to the State, and saluting the Peers, seated himself on the Woolsack as Speaker of the House of Lords.

The two Clerks of the Crown being ready at the Clerks Table, and the Clerk of the Crown in Chancery, having the King's Commission to his Grace in his Hand, both made three Reverences to him, and at the third, coming before the Woolsack, kneeled down, and the Clerk of the Crown in Chancery on his Knee, presents the Commission to his Grace, who delivers it to the Clerk of the Crown in the King's-Bench; and they making three Reverences, returned to the Clerks Table: The Clerk of the Crown in the King's-Bench opened the Commission and read it, having first directed his Grace's Serjeant at Arms to make Proclamation for Silence, which he did with his Mace upon his Shoulder.

While the Commission was reading, his Grace and the Lords stood up, all uncovered; after which his Grace making Obeysance, reseated himself, and then Garter and Black Rod, with three Reverences, jointly presented the white Staff on their Knees to his Grace; and being fully invested in his Office, he, with the white Staff in his Hand, removed from the Woolsack to the Chair placed for him,

an Ascent before the Throne, and sat down.

At Westminster-Hall Gate the Prisoners were receiv'd by General Folliot, and the Axe was carried into the Hall before them with the Edge from them. Proclamation being made in the Court for the Lord Lieutenant of the Tower of London to return the Precept to him directed, with the Bodies of the Prisoners: Which done, the Gentleman Goaler of the Tower brought his Prisoners to the Bar; and the Proclamation was made for the King's Evidence to come forth, the King's Counsel, [Mr. Primier Serjeant Skinner, Mr. Attorney, and Solicitor General, Sir John Strange, and Sir Richard Lloyd] by his Grace's Direction, open'd the Indictment: Then his Grace moved the House, that he might advance forwards for the better hearing of the Evidence, and his Chair was accordingly moved forwards into the Court. William Earl of Kilmarnock was first call'd on, and his Bill of Indictment for High Treason read, to which his Lordship pleaded guilty, and desired to be recommended to his Majesty for Mercy.

Then George Earl of Cromartie was brought to the Bar, who also pleaded Guilty, and pray'd for Mercy.

After which Arthur Lord Balmerino was brought to the Bar, who pleaded Not Guilty, alledging that he was not at Carlisle at the Time specified in the Indictment, being at the Time that that City was taken 11 Miles from thence; and then the King's Council proceeded to call their Witnesses to support the Charge against the Prisoner, four of whom were examin'd and depos'd as follows.

The first Witness swore, That he saw the Lord Balmerino, the Prisoner at the Bar, ride into Carlisle on a bay Horse, the Day after it was taken by the Rebels; that he saw him ride up to the Market-place with his Sword drawn at the Head of his Troop of Horse, which was the second Troop of the Pretender's Son's Body Guards, call'd Elphinston's Troop of Horse.—This Witness further depos'd, that he saw his Lordship very active with the other Rebel Officers in the City of Carlisle when

the Pretender's Son was proclaimed Regent, he having his Sword drawn at the Head of his Troop.

Another Witness proved, That he saw his Lordship ride into *Manchester* at the Head of his Troop, and was there when the Pretender's Son was proclaimed Regent; and the said Troop was the second Troop of the Pretender's Body Guard, and was called *Elphinstone's* Troop of Horse.

Two other Witnesses proved, That his Lordship was called Colonel of his Troop; that he acted always in that Station, gave Orders on all Occasions to his Officers; — And they further deposed, that his Lordship was in several Places on the Road where the Rebels marched, at the Head of his Troop, and was in great Esteem with the young Pretender.

The Prisoner asking neither of the Evidences any Questions, the Council for the King here rested their Proof. Then his Grace the Lord High Steward ask'd the Prisoner if he could offer any Thing in his Defence, or would call any Witnesses who could invalidate what had been prov'd upon him by the Witnesses on his Majesty's Behalf.

To this he reply'd, he was sorry that he had given their Lordships so much Trouble, and had nothing more to say, only that as he was not at *Carlisle* at the Time the Rebels took Possession of it, and the Indictment charging him with being at *Carlisle* expressly at that Time, he could not be guilty of that Indictment.

A Motion was then made by a noble Peer, that the Court might adjourn to the House of Lords; which they did accordingly; and, after many Debates there, they came to a Resolution, that the Opinion of the learned Judges should be taken on the Point which the Prisoner had objected to in regard to the Indictment. Then the Lord High Steward and the Lords being returned into the Court in *Westminster-Hall*, the Point in Question was put to the following Honourable Judges who were present, viz. Lord Chief Justice *Lee*, Lord Chief Justice *Willes*, Mr. Justice *Wright*, Mr. Justice

*Abney*,

*Abney, Mr. Justice Foster, Mr. Justice Birch, Mr. Baron Reynolds, and Mr. Baron Clive*: And the said Judges were all of Opinion, that as an Overt-Act of High Treason, and other Acts of Treason, had been proved beyond Contradiction, there was no Occasion to prove explicitly all that was laid in the Indictment; so that the Prisoner's Objection was no way material, but that the Indictment was a good Indictment, and that so far of it had been proved as the Law requires to convict any Person of High Treason.

Then Proclamation for Silence was made, when the Lord High Steward calling the Peers by their Names, one by one, and beginning with the youngest Baron, ask'd him,

*Whether Arthur Lord Balmerino was guilty of the High Treason of which he stood indicted, or not guilty?*

The Baron standing up, uncover'd, put his Hand on his Right Breast, and said, *Guilty upon my Honour.*

And all the rest of the Peers declared the Prisoner guilty of the High Treason in the same Manner.

After the Prisoner had been found guilty of the Indictment, the Earls of Kilmarnock, and Cromartie were brought into Court, and set to the Bar with Lord Balmerino, when his Grace the Lord High Steward inform'd them, That if either of them had any Thing in Arrest of Judgment, their Lordships must come prepar'd, the Wednesday following, at eleven o'Clock in the Morning, and lay their Objections before the Court, or Judgment of Death would be awarded against them.

After which they were carried back to the Tower in Coaches, and the Ax which was in the Coach with Lord Balmerino had the Edge towards him;

*Wednesday, July 30, 1746.*

The Prisoners were this Day brought again from the Tower into Court: And the Lord High Steward came

came in the usual Manner into *Westminster-Hall*. The Lords having taken their Places, and the Lord High Steward being in the Chair, before the Throne, the Prisoners were brought to the Bar, and Proclamation made for Silence.

After which the Lord High Steward acquainted the Earl of *Kilmarnock*, that, as he had thought proper to plead Guilty to the Indictment against him, he had thereby confessed the several High Crimes and Treasons in the said Indictment mentioned; and therefore he desired to know, what his Lordship had to say, why Judgment of Death should not be passed on him.

" The Earl then addressing himself to the House, made a Speech wherein he confessed the Heinousness of the Crimes, with which he stood charged, and desired their Lordships would not think what he then intended to say, was designed, in any Shape, to extenuate his Guilt, but only to excite Compassion in their Lordships, to implore their Interest with his Majesty, for his Royal Clemency in his Behalf.—He then acquainted the House, that the many Services his Father had done the Government, would have some little Weight with their Lordships for the above Purpose.—That he had always taken great Pains to bring up his Son in the Revolution Principles.—That the constant Behaviour of his Son, who had the Honour of bearing a Commission under his Majesty, was well known to many of their Lordships, and therefore he appealed to them, whether his careful Endeavours in the Education of him, being attended with Success, did not, in some Measure, shew he was far from encouraging those Principles which had now brought on him this unhappy Disgrace.—That for his own Part, he had always, till he was, on this present Rebellion, persuaded to swerve from his Allegiance, been a true and faithful Subject of his Majesty.—That he had, from the Rile of the present Rebellion, till the very Hour in which he most unhappily became a Party in it, been of great Service to the Government.—That by his

Presence in Kilmarnock, and other adjacent Places in that Part of *Scotland*, he had prevented great Numbers from joining the Rebels, and excited the Country as much as possible to continue firm to their true Allegiance.—That he was very far from being a Person of Consequence among the Rebels.—That he had not raised one single Man for their Service, nor had he bought up any Arms.—That soon after he had joined them, being over-persuaded, he was convinced of his Error, and, reflecting upon the Consequences that must necessarily attend his Family, by persisting in that Error, to prevent so great a Blot in his own Escutcheon, he determined to submit himself to his Majesty's Clemency.—That for that Purpose he separated himself from his Corps at the Battle of *Culloden*, and staid to render himself a Prisoner, though he had frequent Opportunities, and might, with the utmost Ease have made his Escape: For the Truth of which he appealed to the Person to whom he surrendered.—That since he had joined them, he had spared the Lives of many of his Majesty's Subjects, whom they had taken Prisoners; and that he assisted the Sick and Wounded as much as lay in his Power, and had endeavoured to make their Confinement as easy to them as possible.—That it was with the utmost Horror and Detestation he had seen a Letter from the *French* Court, presuming to dictate Laws to a *British* Monarch, in what Manner he should treat his rebellious Subjects, and that if he had any Mercy, he should desire to receive it only by the Intercessions of *Britons*; but if Justice would not permit Mercy to take Place, and that if, after all he had said, the above Motives should not be sufficient to induce them to employ their Interest with his Majesty, for his Royal Clemency in his Behalf, which he most heartily prayed, he should then lay down his Life with the utmost Pleasure; and that his latest Moments should be employed in fervent Prayer for the Preservation of the Illustrious House of *Hanover*, and for the Peace and Prosperity of *Great Britain*"

The Earl of *Cromarty* being called on by the High Steward to know what he had to say, why Judgment of Death should not be pronounced against him, desired their Lordships favourable Representation of his unhappy Case to his Majesty, in consideration of his numerous Family. \*

Lord *Balmerino* was last call'd upon, to know what he could say why Judgment of Death should not be awarded against him according to Law.

His Lordship, directing himself to the Lord High Steward, produc'd a Paper, and desired it might be read.—The Lord High Steward told his Lordship he was at Liberty to read it, if he pleas'd; but the Prisoner reply'd, his Voice was too low, and that he could not read it so well to be understood as he could wish: On which the Lord High Steward gave Orders for one of the Clerks of the Parliament to go near the Bar to the Prisoner, and read the Paper aloud, so that their Lordships and the Prisoner might hear the Contents: And the Clerk having receiv'd the Paper he read it, standing just within the Bar by the Prisoner; which Paper was to the following Purport;

That the Indictment was founded on an Act of Parliament made the last Session, by which Prisoners tried for High Treason, committed in the late Rebellion, were to be tried in such County as his Majesty should appoint; but that the Treason with which the Prisoner is charged, is assign'd to be committed at *Carlisle*, where he ought to have been indicted, and not in *Surry*, because the Treason was committed before the passing of the said Act; and therefore that the Prisoner could not be affected by it, and consequently that the whole Superstructure built thereon must necessarily fall to the Ground. The Prisoner therefore pray'd their Lordships to assign

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\* The Earl of Cromarty said nothing more than what is here inserted, altho' there was a Speech in the publick Papers in very moving Words, said to be made by his Lordship.—He really appear'd at the Bar under so deep a Grief, that he scarcely could utter the few Words he did.

assign him Council to be heard on that Head.

Then the Earl of *Granville* mov'd, that the Lords would adjourn to their own House in order to consider of what the Prisoner had offer'd.

The Prisoners were then removed from the Bar, and the Lords went to their own House, where they debated the Matter for about an Hour and a half, and then return'd to the Court in *Westminster-Hall* in the usual Form, and being seated, the Prisoners were again call'd to the Bar: When the Lord High Steward asked the Lord *Balmerino*, if he required to have Council to speak to the Point which his Lordship had before proposed; and the Lord *Balmerino* answering, Yes, *he did require it*; then the Lord High Steward told his Lordship, that he was ordered by the Lords to acquaint him, that they agreed to his Request, and desired him to name the Council he would have them appoint for him. Upon which he named Mr. *Wilbraham* and Mr. *Forrester*; which the Lord High Steward told him the Court agreed to, and appointed *Friday Morning*, the 1st of *August*, to have the Point argued, when the King's Council would attend. Then the Prisoners were taken from the Bar, and the Court adjourn'd. The Prisoners were carried back to the Tower, and the Ax in the same Manner as before.

*Friday, August 1, 1746.*

The Lord High Steward being come down, and the Lords being met in their own House, they went from thence in the usual Form, to the Court in *Westminster-Hall*; where being seated, and Proclamation made for the Constable of the Tower to bring his Prisoners to the Bar, he brought them in accordingly. Then the Lord High Steward asked Lord *Balmerino*, if he was ready by his Council to argue the Point which he had proposed to the Court the

*Wednesday before ? To which Lord Balmerino replied,* that his Council had advised him, that there was nothing in his Objection sufficient to found an Arrest of Judgment upon ; and therefore he withdrew it, and humbly crav'd their Lordships Pardon for giving them so much Trouble, and submitted himself to the Court.

Then the Lord High Steward ask'd the Earl of Kilmarnock and the Earl of Cromartie, if they had any Thing more to say, than what they had before offer'd ? They replied, that they had nothing more, and submitted themselves to the Court. Then, after Proclamation was made for Silence, the Lord High Steward made a most learned, eloquent, and excellent Speech ; which being printed by an Order of the House of Lords, and publish'd by S. Billingfley, in *Chancery Lane*, we refer the Readers thereto.

But before we proceed to the Judgment which the Lord High Steward pronounced, it will be very requisite to say something his Lordship concluded his Speech with, which was, That the Rebels soon saw many of the Nobility and Gentry, from amongst the first Families, the greatest Estates, and the best Blood in the Kingdom, surrounding the Throne, soliciting to be permitted to hazard their Lives in this glorious Cause, and to be authorized at their own Expences, to raise Forces for its Support. But, above all, they saw both Houses of Parliament, the great Council of the Nation, the Representative Body of this People, warmed with a truly *British Spirit*, and treading in the Steps of their Ancestors, over-coming all Difficulties, and unanimously concurring in every Measure to strengthen the KING's Hands, and to maintain that Government, on which the very Being of Parliaments, and the Preservation of this limited Monarchy depend.

To these judicious Reflections, his Lordship add'd, the following : If these Enemies of our Peace had formed to themselves Hopes of contrary Appearances,

ances, it must be owing to the highest Degree of Infatuation, that they were not soon convinced of their Mistake. Great Reason have we to offer up our Thanks to Heaven, that they have been effectually disappointed. Even your Lordships, said he, if you will allow yourselves to weigh your own Case in the just Ballance of Religion and Conscience, will find Cause to be thankful, that the Measure of your Guilt was not suffered to be filled up, and enhanced by the final direful Success of it. If from any unforeseen Accidents, not uncommon in military Operations, those delusive Hopes were for some Time kept alive, it seems to have been judicially design'd by Providence, to render more signal that Vengeance, which was reserved for them at the Battle of *Culloden*. How much was owing, on that memorable Day, to the Bravery and Discipline of his Majesty's Troops, to the animating Example, the intrepid Valour, and the wise Conduct of a Prince descended from him, is so deeply engraven in the Heart of this great Assembly, that nothing could be said, but what would be a Repetition of what their own grateful Minds had suggested to themselves, and represented to the Throne. Then was experienced how much that Courage, which Virtue, true Loyalty, and the Love of our Country inspire, is superior to the Rashness and false Fire of Rebellion, accompanied with the Terrors of Guilt.

His Lordship concluded with observing, that it was his Majesty's Justice to bring their Lordships to a legal Trial; and it was his Wisdom to shew, that as a small Part of his national Forces was sufficient to subdue the Rebel Army in the Field, so the ordinary Course of the Laws was strong enough to bring even their Chiefs to Justice.

His Lordship then pronounced the Judgment which the Law required, and which that High Court awarded, *viz.*

• That you, *William Earl of Kilmarnock, George Earl of Cromartie, and Arthur Lord Balmerino,*  
 • and every of you, Return to the Prison of the Tower from whence you came ; from thence you  
 • must be drawn to the Place of Execution ; when  
 • you come there, you must be hang'd by the Neck,  
 • but not till you are Dead ; for you must be cut  
 • down alive ; then your Bowels must be taken out,  
 • and burnt before your Faces ; then your Heads must  
 • be sever'd from your Bodies, and your Bodies must  
 • be divided each into four Quarters ; and these must  
 • be at the KING's Disposal.

• And God Almighty be merciful to your Souls.'

Then the Prisoners were taken from the Bar, and the Lord High Steward standing up, he inform'd the Lords that all the Busines was completed, which by his Commission he was to execute, and then his Grace took the white Rod in both his Hands and broke it in two Pieces, and declared his Commission was at an End.

The Busines of the Court being over, the Lords adjourn'd to their House ; when a Motion was made, and carried in the Affirmative, That the Thanks of that House be given to the Right Honourable the Lord Chancellor, for his equitable Administration of his Office, as Lord High Steward appointed for the Trial of the Lords, who had been indicted for High Treason.

Having thus given a true and exact Account of all the Proceedings against the said Lords on their Trials, and of their Conviction and Condemnation ; it now remains, that we relate such Particulars as have come to our Knowledge, of the Lives, Families, Conversation, Behaviour, and Dying Words of those two of them, the Earl of Kilmarnock and the Lord Balmerino, who were ordered for Execution ; the Lord Cromartie, by the Intercession of his Friends, having obtained a Respite.

*The Life, Family, and Behaviour,  
whilst in the Tower, and last Dying  
Words of William Earl of Kilmarnock.*

**WILLIAM BOYDE** Earl of *Kilmarnock*, is descended of a very antient Family. He takes his Title of Earl, from a Royal Borough of that Name, in the Shire of *Cunningham*. The first remarkable Man of his Family, and the first who assumed the Surname of *Boyde*, was, as the *Scots Genealogists* affirm, *Robert*, the Son of *Simon*, third Son of *Allan*, Lord High Chancellor of *Scotland*, in the Year 1111. So in Right of this *Robert*, from whom the Earl of *Kilmarnock* is lineally descended, this Branch of the Name of *Boyde*, claims to be Chief, and acted in that Capacity, when Chieftainship was in Repute in that Part of the Country; but for more than a Century and a Half, Chiefs in that Part of *Scotland* neither have, nor claim any other Advantage, but that of Precedency.

Several in the Line of this Family, have distinguished themselves for their Bravery in the Field, as well as their Judgment in the Cabinet. In the Year 1263, Sir *Robert Boyde* gave signal Proofs of his Valour and military Skill, in that famous Battle of the *Largs*, fought by the *Scots*, against the *Norwegians*, who attempted to make a Descent upon that Part of the Country; for which he obtained a Grant from the Crown, of several Lands in the Shire of *Cunningham*.

He was succeeded by another Sir *Robert Boyde*, who likewise exercis'd his Valour in Defence of his King and Country; and received, as a Reward of his Services, the Lands of *Kilmarnock*, from *Robert* the first, then King of *Scotland*.

Another of the Ancestors was stiled Sir *Alexander*

*der Boyde of Duncow*; this Branch succeeded to the Estate and Honours of *Kilmarnock*.

*Robert*, the first Lord *Boyde*, was succeeded by his Son *Robert*, who inherited from his Father all those eminent Qualities which gave Lustre to his high Birth; and in a short Time gained such a Share of Reputation and Popularity, that on the 25th of *October*, 1466, he was by Letters Parent created Regent of *Scotland*, during the Minority of King *James III.*

His Son *Thomas Lord Boyde*, by his Father's Interest as Regent, married the Lady *Mary Stewart*, eldest Sister to King *James III*, who created him Earl of *Arran*. His Father sent him Ambassador to *Denmark*, to treat of a Marriage between the young King, his Brother in-law, and *Margaret*, a Daughter of that Crown. He succeeded in his Embassy, espoused the *Danish* Prince in the Name of his Master, and brought her safe to the Firth of *Leith*, where the Queen landed. But his Enemies saw with Envy the high Honours to which he was rais'd, and, in his Absence, prevail'd on that Prince so far, as to sacrifice, to their Relentment, not only the Earl, but all his Family; which he being inform'd of, return'd to *Denmark*, without setting Foot on Shore. The old Lord *Boyde*, his Father, also made his Escape to *England*, where he died in Peace.

The Earl of *Arran* by his Lady, the Lady *Mary Stewart*, left a Son, named *James*, who died without Issue; and a Daughter, who was first married to *Alexander Forbes*, Ancestor of the Lord *Forbes*, and afterwards to *David Kennedy*, Earl of *Cassils*, by both which Marriages she had Issue; the Lady *Mary*, Widow of the Earl of *Arran*, in the Year 1474, married *James Lord Hamilton*, and in her Right, as descended from her, that noble Family of *Hamilton* was next in the Intail of the Crown of *Scotland*, after the Extinction of the House of *Stewart*.

The

The Earl of *Arran's* Son *James* dying without Issue, the Line was carried on by Sir *Alexander*, Son of Sir *Alexander Boyde of Duncow*, who by King *James* the fourth, was restored to the Lands of *Kilmarnock*, and the rest of the Estate of his Family.

*Robert*, a Descendant of the aforesaid Sir *Alexander*, was a Nobleman of an active Genius; and continued firm to the Interest of the unfortunate Queen *Mary*, and never deserted her Cause, till by her imprudent Flight into *England*, she put it out of the Power of her loyal and well-affected Subjects to do her any Service. Then indeed, he complied with the Necessity of the Times, and the Humour of the People, in setting her Infant Son upon the Throne, without any Regard to the Mother's Title.

Nothing remarkable passed in the Family, till *William* succeeded to the Estate; who being a Man of Wit and Learning, made a Figure in the Court of King *Charles II.* who created him Earl of *Kilmarnock*; who dying, was succeeded by his eldest Son *William*, and he by his Son *William*, the third Earl of *Kilmarnock*. He was a Nobleman remarkably zealous in the Parliament of *Scotland*, for the famous Act, called, *The Act of Security*; but was somewhat wavering in his Conduct in relation to the Union; however, in the End he joined with the *Whiggs*, and those who promoted the Union. He died in the Year 1717, leaving Issue the present *William*, the fourth Earl of *Kilmarnock*.

This *William*, who has just suffer'd the Sentence of the Law for High Treason, was very young when his Father died; whose Death leaving him too soon at Liberty to be his own Master, and the Indulgence that is generally given to young Noblemen, added to the natural Sprightliness of his Temper, soon gave him an Aversion to a rigorous Study of Letters, tho' he made some Progress in Classical Learning, and had acquired some tolerable Notion of Philosophy and the Mathematicks. But he was more hap-

py in acquiring those which are called genteel Accomplishments ; such as Riding, Fencing, Dancing, and Musick ; in all which he excelled, and was justly esteemed by Men of Taste, a polite Gentleman.

When he came to his Estate, he found it encumber'd, and great Part of the old Patrimony alienated ; neither was the Earl of a Disposition to improve it by Oeconomy ; on the contrary, as his Income was vastly short of his Generosity, or rather Profuseness, he found his Affairs daily growing worse ; and could think of no Way of bettering his Circumstances, but by an advantageous Match. To this Purpose he made his Addresses to the Lady *Ann Livingston*, Daughter of James Earl of Linlithgow and Callendar, a young Lady of a large Fortune and fine Accomplishments : But her Friends, who knew the low Ebb of the Earl's Fortune, refused their Consent ; the Lady, however, being taken with his Lordship's agreeable Person and genteel Address, married him without her Mother's Consent. 'Tis said, his Lordship made but very ungrateful Returns for the Lady's Generosity ; but as the Lady has a good deal of Spirit, Wit and Understanding, they have liv'd together civilly, if not happily.

His Lordship's Excesses, together with the Charge of a Family, reduced the Estate so low, that it would no longer support them with any tolerable Decency ; which oblig'd him to apply to the Ministry for a Pension, which he obtained, and thereby link'd himself to the Court Interest, and made a Tye upon his Loyalty to the Prince on the Throne. This Pension his Lordship ever since enjoy'd ; which, one would think, might have kept him loyal to his lawful Sovereign.

How he came to be seduc'd from his Duty is hard to say ; it is certain that the Rebellion was far advanc'd before he came into it. As his Countess is Heiress of the House of Linlithgow and Callendar, this Lord might flatter himself with some Advantages

ges that Way, by the Restoration of the House of Stewarts. This Circumstance, and his Lordship's Necessities, might induce the Party to number him as one of their Friends, without so much as consulting his Inclinations; and these Hopes might likewise induce his Lordship to comply with their Solicitations with less Reluctance; and had he been supported but by one Friend, to second his own natural Timidity and Irresolution, he had certainly deceiv'd the Expectation of the Party, and preserv'd his Loyalty. But his Lady happening to be at Edinburgh when the young Pretender enter'd that City, she was charmed with his military Appearance, and the Affability with which he treated her and all the Ladies, and herself in particular, that she was soon converted to Jacobitism; and her Lord had not Resolution to withstand her Solicitations, especially after the Battle of Preston-Pans, which elevated the Jacobites to such a Degree, that they esteemed it Madness and Infatuation in every Body who did not immediately join their Standard. Accordingly the Earl of Kilmarnock joined them, and was extremely caref'd by the young Chevalier, declared of his Privy Council, made Colonel of his Guards, and promoted to the Degree of a General. In these Stations, it's said, he behaved with Courage and Resolution till the Day of the glorious and never to be forgotten Battle of Culloden, when every Thing that was manly forsook him, and he rather surrendered himself, than was taken Prisoner.

It deserves Observation, that this Earl, when he was but eleven Years of Age, appear'd in Arms in Company with the Earl his Father, and was much taken Notice of for his graceful Behaviour. This was in the last Rebellion, in the Year 1715, when his Father appear'd at the Head of above 500 of his own Men, in Defence of his Majesty King George I; and happy had it been for his Son, had he exerted

himself as strenuously in Behalf of his present Majesty, and not have degenerated from so noble an Example as his Father had left him.

During his Lordship's Confinement in the Tower, before his Conviction, he behav'd very seriously and sedately, expressing his Sorrow for having engaged himself in the late unnatural Rebellion.

One thing deserves Remark, and which we are sorry to say ; and that is, that his Lordship had a Pension from his Majesty, and had also at Times received many and great Marks of Favour and Distinction from the King, all of which were Aggravations of his Ingratitude in taking up Arms against a Prince by whom he had been so much favour'd and nourish'd.

The Earl of Kilmarnock had three Sons, one of them, the Eldest, Lord Boyde, has a Commission in the King's Forces, in the Regiment of Welch Fuzileers, and was with the Duke at the Battle of Culloden, and behaved himself bravely, notwithstanding he well knew his Father was Commander of a Troop of Horse Guards in the Pretender's Army they were going to engage. One of his other Sons has a Commission in the Navy, and is now in the Fleet along with Commodore Barnet, in the South Seas ; and the third was in the Rebellion with his Lordship, but made his Escape after the Battle of Culloden.

The Earl of Kilmarnock, in his Paper he delivered to Mr. Foster, mention'd what he frequently had said, that he acknowledged King George our present Sovereign, to be the right and lawful Heir to the Crown of these Realms ; that he never knew of any cruel Orders being issued against the King's Forces ; and that if any such had been proposed to him, he should have objected against them with Detestation and Abhorrence ; and that he was persuaded that if Reasons of State, and the Demands of publick Justice had permitted his Majesty to follow the Dictates of his Royal Heart, his Sentence he believ'd would have been mitigated ; and concluded the said Paper with a fervent Prayer for his Majesty King George, and his whole Royal Family, praying to God to make his Reign long and glorious.

The Earl of Kilmarnock sent a Letter to his Son, the Lord Boyde, the Day before his Execution, in which his Lordship recommended to him how to make the Rule of his Life for the future ; and begging of him to mind and study his Duty to God, his King and his Country, and above

above all Things recommending him to continue in his Loyalty to his present Majesty, and the Succession to the Crown, as by Law establish'd ; that he desired him to be good to his unhappy Mother, and to comfort her, and to take care of his Brothers, particularly him who had been in the Rebellion with him ; and to advise him to go to Geneva, where his Principles of Religion and Liberty would be confirmed, and where he might stay till he saw whether a Pardon could be procured him.

The Earl of Kilmarnock declared to Mr. Foster, when he visited him under his Confinement, that in his Hours of Solitude he had felt his Crime of Rebellion lie as a heavy and severe Load on his Conscience, and particularly upon two Accounts, which were peculiar Aggravations of his Guilt, namely as being a Rebel against his Conscience and inward Principles, and in Violation of his Oath solemnly and often repeated.

As to what passed in the Church of St. Ninians, he declared he knew nothing of it till he heard the Noise of blowing up the Church, and then he was sick of a Fever in his Bed ; and that he himself never could get any just Account of the same.

His Lordship being press'd much as to the Truth of that Part of his Speech at the Bar on his Trial, That it was very easy for him to have made his Escape, but that he chose rather to surrender than live in Rebellion any longer ; he answer'd, that what he had said at his Trial he sincerely beg'd Pardon for, for that he was induced thereto by a strong Desire of Life ; and owned the Fact as follows, viz. that he had no Intention at all to surrender, and that his only View was to make his Escape after the Battle of Culloden, for that he thought the Body towards which he advanced were not the King's, but Fitz-James's Horse. He likewise declared, that tho' Lady Kilmarnock was bred in different Sentiments, that he thought her now more in Whigis than Jacobite Principles, and that instead of exciting him to, she dissuaded him from entering into the late wicked and horrid Rebellion.

When Lord Kilmarnock was press'd hard to acknowledge, what could be his Motive to engage in the Rebellion against his Principals, he answer'd, That the true Root of all was his careless and dissolute Life, by which he had reduced himself to great and perplexing Difficulties ; that the Exigency of his Affairs was in particular very pressing at the Time of the Rebellion, and that the general Hope

he had of mending his Fortune, and retrieving his Circumstances, occasioned him to follow the Pretender's Standard.

When Mr. Foster told Lord Kilmarnock, that he was charged with a Piece of Barbarity to the Prisoners confined in the Church at Inverness, his Lordship said, That there were Orders issued by the Pretender's Son, to strip them of their Cloathing, for the Use of some of the Highland Rebels; that the Warrant for executing this Order was sent to him; that he did not enter the Church in Person; but committed the Execution of it to an inferior Officer; that the Prisoners, at first, refused to submit, upon which there was a second Order, and their Cloaths were taken from them; but that in the mean Time, the Person stiled the French Ambassador, represented to him, that this was an Outrage, which he thought scarce justifiable by the Law of Nations, and the Rules of War; He therefore, while the Cloaths lay in Heaps, with proper Centinels over them, in the Streets of Inverness, went up to the Pretender's Son, and represented the Matter in the Light in which the French Ambassador had stated it, and according to what were his own Sentiments likewise; upon which, as it was feared that such Usage might make an ill Impression upon the Minds of the People, the Cloaths were again restor'd; and this, he averred, was the whole of the Truth, as far as it ever fell under his Knowledge.

When Lord Kilmarnock was informed, by the Rev. Mr. Foster, that the Earl of Cromartie was reprieved, and that he and Lord Balmerino were to be executed on the Monday following, Mr. Foster said to him, *I hope you do not think you have any Injustice done you?* His Answer was, *I am extremely glad to hear his Majesty has shewn Mercy to Lord Cromartie. I have pleaded Guilty, I entirely acquiesce in the Justice of my Sentence, and if Mercy be extended to another, I can have no Reason to complain, when nothing but Justice is done to me.* I do not believe, that my not being reprieved is owing to any Defect of Clemency in the King, who, by all the Accounts I ever receiv'd, is a very merciful Prince; nor that it springs from any particular Resentment or Prejudice against me, either in his Majesty, or in the Duke; but from some Distinction that they thought there was in the Circumstances of Lord Cromartie's Guilt and mine, or else from the publick Demand for Justice, which made it unfit that two out of three should be reprieved.

What relates to the Behaviour of this unfortunate Lord the Day of Execution, is hereafter particularly related.

The

*The Life and Family, Behaviour and Dying Words of Arthur  
Elphington, Lord Balmerino.*

THE Name of *Elphington*, though not very numerous in Scotland, yet is very antient, and has abounded with Men of Figure and Eminence in their Country. It's said, that they came originally from Germany; and that the first of that Name in Scotland, married in the Reign of King Robert I. Margaret, Daughter to Sir Christopher Seaton, by his Wife, the Lady Christian, Sister to King Robert; which supposes, that this German was a Man of considerable Note in his own Country. He was a brave and valiant Man, and always ready to distinguish his Merit, and purchase Honour, which, in those Days, was acquired by the Sword. On which Account he was much care'd by King Robert, who prevail'd on him to settle in the Country, and bestowed on him several Lands in *Mid-Lesbian*, the Revenue of which was sufficient to support his Dignity. These Lands Mr. *Elphington* called after his own Name which they still bear.

In the Lineage of this Family there appears several Chasms from the Reign of Robert I. till the 33d of David II. when, they tell us, that Alexander, the then Head of the Family, exchanged certain Lands, then in his Possession, called *Kincinbar*, for certain other Lands called *Arthberg*, in the Shire of *Stirling*, then in the Possession of Alexander, Son of Sir *Adan Moor*. These Lands of *Arthberg* he called *Elphington*, and is the chief Seat, and gives the Title of Lord to the Lord *Elphington*, Chief of the Family we are now treating of.

The Line of this Family was, after this, very much broken; though we find several of its Chiefs giving eminent Proofs of their undaunted Courage and Resolution; which we have not Room here to particularize; however, we must not omit the Prowess of Alexander, one of that *l/c*, or Name, who having a considerable Command in the *Scots* Army at the famous Battle at *Pipardain*, exerted himself in so extraordinary a Manner, that the signal Victory obtained by the *Scots* that Day over the *Englifh*, was entirely owing to his Valour and Conduct; but did not live to reap the Fruits of his Victory, being killed, in the Heat of the Pursuit, by a random Shot of the Run aways, or rather (as some say) by the Mistake of his own Men, too eager in the Chace to distinguish Men.

He left only one Daughter, named *Agnes*, who married *Gilbert*,

*Gilbert, Son and Heir of Adam Johnston of that Ilk, who was possessed, in Right of her, of all the Lands belonging to her Father, in the Shire of Mid-Lotbian; but those Lands named Elphinston, in the Shire of Stirling, devolved on his Death, in Consequence of a solemn Arbitration in 1471, upon Sir Henry Elphinston, Brother to Sir Alexander, who, as the next Collateral Male Branch, has continued the Line of this noble Family, in a direct Lineage without any Interruption.*

This Sir *Henry* had Issue Sir *Alexander*, who left Issue *Alexander*, the second Lord *Elphinston*, who married *Elizabeth*, Daughter of *John Lord Erskine*, by whom he had five Sons; the third of them was Cup-bearer to *James VI.* the fourth was Master of the Household; and the eldest, named *John*, succeeded his Father.

*John*, the third Lord *Elphinston*, married *Elizabeth*, Daughter to Sir *John Drummond*, of *Innerpeffy*, by *Janet* his Wife, natural Daughter of King *James IV.* his Merit was conspicuous, and he soon made a Figure both in the Camp and Cabinet. By the Union of the two Crowns, the Jars between *England* and *Scotland* being at an End, he went into the Service of the Emperor, where he signaliz'd himself to his own and his Country's Honour. Returning to his own Country, he made as considerable a Figure as a Statesman, as he had done Abroad as a General. By his Interest at Court, he got his second Son *James* created a Baron, by the Name and Title of *Balmerino*; his eldest Son succeeded him in the Title of *Elphinston*, was made a Privy Counsellor by King *James VI.* and Lord High Treasurer of *Scotland*.

*James Elphinston*, second Son of Lord *Elphinston*, was, by his Father, bred to the Law; and became so remarkable in his Profession, that King *James* made him one of the Senators in the College of Justice; and shortly after, Secretary of State, and President of the Court of Session; which Offices having discharged to the Satisfaction of the Subject, as well as of the King, he was created a Baron by the Name and Title of Lord *Balmerino*.

This Lord *Balmerino*, as appears, was tried for High Treason at St. Andrews, March 10, 1609.

The Nature of his Crime seems to have been this: That he the Lord *Balmerino* being a professed Protestant, had often pressed the King to write a Letter of Compliment to the Pope; which his Majesty refusing, *Balmerino* wrote a Letter, and thrusting it among several Dispatches which

which he brought to the King just as his Majesty was going a hunting ; his Majesty in a Hurry inadvertently sign'd it. The Letter was sent away, and afterwards mention'd by Cardinal Bellarmine to his Majesty's Disadvantage.

The following Account of his Lordship's Trial is taken from a Manuscript in the Bodleian Library\*. The Account is very short, and only relates, that he the Lord Balmerino was summon'd before the Lords, when the Lord Advocate acquainted him, that there was a Warrant from his Majesty to try him, and desired to know whom he appointed to speak for him. To which his Lordship answered, That he had great Necessity to speak, the Cause being such as concerned his Life and Estate ; but he had greater Necessity to hold his Peace, by Reason of his Offence, which was such as it admitted no Excuse ; and (said he) my Grief is so great, as it will not suffer me to extenuate my Crime ; and therefore I will neither make any Friend interested in that, whereunto myself fell without the Advice of any ; nor will I desire a Lawyer to make that seem less, which I would have all the World know to be such as it is.

Herein are two Points in which I would have all Men satisfied concerning his Majesty : First, for his Majesty's Innocency in the Writing of the Letter ; for I protest I could never draw him to hear with Patience my Motion : But he did utterly and absolutely refuse to take that Course against Conscience, which would neither satisfy me, who in a politick natural Course had conceited it might be behoveful for his Majesty ; and so applied myself to the crooked Device which hath worthily brought me to this Estate wherein I now stand.

The second Thing concerning his Majesty, is this : That whereas some in Malice to his Majesty, or my Friends in Commiseration of my Estate, do think and report it too rigorous and cruel a Course, which is held against me in a Matter of this Moment, the suggesting of a Letter of Recommendation, to proceed against my Life and Estate ; I would have such know, that his Majesty's Clemency is many Ways testified unto the World in Cases that have seemed more nearly to concern him ; and therefore Men should not judge of his Majesty's Disposition to Mercy by this Ac-

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\* Rotulæ in Archivo. A. 3033. 44. 10. and though short, is a more perfect Copy than that in the Cotton Library, Julius, F. 6. N. 34.

tion ; but rather cast their Eyes upon my Unhappiness, who have offended in such a Point as his Majesty can extend no Favour to me without the Damage of his own Honour ; which being dearer to him than his Life, it must needs be more tendered than 20,000 such Lives as mine. And therefore I desire not to be spared at so dear a Rate as the Impeachment of his Majesty's Honour.

There are likewise two Things concerning myself, which I desire all Men to understand. First, That I had no Aim at the Alteration of Religion, or to bring in a Toleration, or what you will term it, by the Writing of that Letter : But merely a politick Course, as I have said, which, as a natural Man, I conceited might further his Majesty's Right : And this I protest to be true, as I shall answer God in the Day of Judgment, when the Secrets of all Hearts shall be disclosed.

Next, I wou'd have no Man think that it was Gain, or any private Advantage that drew me to that : For I protest I never received or expected the least Reward from any Prince in the World, save from the King my Master : And this as I shall answer the great God in Heaven.

The Jury then going together, after a Time returned, and found him guilty of all the Parts of the Indictment.

Then the Lords conferring upon the Bench ; my Lord Justice signified, That they were not to proceed further till they knew more of the King's Pleasure : And so advising the Lord President to fit himself for God ; and giving the Jury Thanks for their Pains and Care they had of his Majesty's Honour ; the Court rose.

[ " He was by an Order from Court detained a Prisoner  
" for some Time ; and afterwards made a sort of Prisoner  
" at large ; till at last, in Consideration of his submissive  
" Behaviour, and the Sufferings he had undergone ; the  
" King was pleased to pardon him, and to restore his Blood  
" and Estate." ]

This Lord Balmerino married to his first Wife *Sarab*, Daughter to Sir *John Monteeth* of *Cars*, by whom he had *John* his Heir. His second Wife was *Margery*, Daughter of *Hugh Maxwell* of *Tyning*, by whom he had one Son, *James*, created Lord *Cowper*, and a Daughter married to Lord *Frasier*.

*John*, the second Lord Balmerino, married *Anne*, Daughter to *James Kerr* of *Kerstrand*, and Sister to the famous

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\* His Son was tried for a Libel in the following Reign.  
Kerr,

*Kerr, Earl of Somerset*, Favourite to King *James the Sixth*, the Man for whose Sake he denounced a Curse upon his Posterity, which seems to have follow'd them and the Nation ever since.

He left Issue one Son, named *John*, who married *Anne*, Daughter to *John Campbell*, Esq; Earl of *Loudon*; and by her had Issue,

*John*, the fourth Lord *Balmerino*, who in the Reign of Queen *Anne* was made General of the Mint, and Sheriff of the County of *Edinburgh*; and in 1713 was elected one of the Sixteen Peers in the Parliament of *Great Britain*. His first Wife was *Christian*, Daughter to *Hugh Montgomery*, Earl of *Eglington*; by whom he had two Sons, and one Daughter; *Hugh* the Eldest was killed at the Siege of *Lille*. His Second Wife was Daughter of *Arthur Ross*, Archbishop of St. *Andrews*, by whom he had two Sons and one Daughter.

*James*, the Younger, succeeded him. While he had no Prospect of the Estate and Honours of *Balmerino*, he was bred to the Law; where he made a considerable Figure at the Bar as an Advocate. His remarkable Abilities, accompanied with a great Sedateness, soon recommended him to a Seat on the Bench, where he discharged that high and important Trust with great Honour and strict Integrity; always avoiding mixing Party Spirit with the Bench; and never could be brought to prostitute the Dignity of his Office to serve ministerial Jobs; but the Country might always depend upon him as a fast Friend, when any Thing relative to their Interest came before the Court. He applied closely to the Business of a Judge, and gave such Satisfaction to the Practitioners of that Court, that there have been forty Causes in his Hand Roll, when there were not one fourth of that Number before some other Judges.

This worthy Lord died in the Year 1744, but left no Issue. He was succeeded by *Arthur Lord Balmerino*, (lately convicted of High Treason) the Son of *John*, the fourth Lord *Balmerino*, by his second Wife, Daughter of *Arthur Ross*, Archbishop of St. *Andrews*.

Lord *Balmerino* had but a small Estate, and was Ground Landlord and Lord of the Manor of *Colcon* in a long Street in the Suburbs of *Edinburgh*, leading to *Leith*, and had also some other small Things in the Shire of *Fife*. His Lady came to *London* soon after him, and has frequently attended

him ever since his Confinement in the Tower, and had Lodgings in *East Smithfield*. She was at Dinner with him when he was informed by the Governor, that the Warrant was come down for his Execution the *Monday* following. His Lady being very much surpriz'd, he desired her not to be concern'd at it ; if the King had given me Mercy, said he, I should have been glad of it ; but since it is otherwise, I am very easy ; for it is what I have expected, and therefore it does not at all surprize me. His Lady seem'd very disconsolate, and rose immediately from Table ; on which he started from his Chair, and said, *Pray, my Lady, sit down, for it shall not spoil my Dinner* ; upon which her Ladyship sat down again, but could eat nothing.

His Lordship, during his Confinement in the Tower, behav'd very religiously, and had the Chaplain of the Tower to attend him, being a Member of the Episcopal Church. He kept a plentiful Table, and never appeared dismayed at his approaching Fate ; and some few Days before his Execution, being ask'd in what Manner he would go to the Scaffold ? he answered, " He would go in the Regimentals " which he wore when he was first taken, and that he would " have a woollen Shirt next his Skin, which should serve " him instead of a Shroud to be buried in." Being then ask'd, why he would not have a new Suit of Black ? he replied, " It would be thought very imprudent in a Man " to repair an old Hous'e when the Lease of it was so near " expiring ; for the Lease of his Life would expire next " *Monday*.

The Lord *Balmerino* had a Captain's Commission under the Command of the Duke of *Argyle* in the Year 1715, and his Grace having a Suspicion of his Loyalty, he told his Grace that whilst he had the Honour to bear King *George's* Commission, he would act with Fidelity ; but when the Pretender landed in *Scotland*, he sent his Commission to the Duke, saying, that he had given his Honour to serve the Pretender whenever he landed in *Scotland*.

#### *The Day of EXECUTION.*

**T**H E Sheriffs, with their Under-Sheriffs and Officers, met at the *Mitre Tavern*, in *Fenchurch Street*, about Eight o'Clock in the Morning ; from whence they proceeded to *Tower Hill*, to the House near the Scaffold, which

which had been taken for the Reception of the Lords that were to suffer, and to exercise their private Devotions in, before they were led to the Scaffold. At Ten o'Clock the Sheriffs with their Attendants proceeded to the Tower, and being come to the Gates, one of their Officers knocked at it ; upon which a Warder with asked, *Who was there !* The Officer without replied, *The Sheriffs of London and Middlesex.* The Warder then asked, *What they wanted !* The Answer was. *The Bodies of William Earl of Kilmarnock and Arthur Lord Balmerino.* Upon which the Warder within said, *I will go and inform the Lieutenant of the Tower therewith ;* and in about ten Minutes the Lieutenant of the Tower, with the Earl of Kilmarnock, and Major White, with Lord Balmerino, guarded by several of the Warders, came to the Gate ; the Prisoners were there delivered to the Sheriffs, who gave proper Receipts for their Bodies ; they then proceeded in a slow and solemn Procession on Foot up to the House near the Scaffold, where the two Lords were put into sepearate Apartments.

The Earl of Kilmarnock was attended by the Rev. Mr. Foster, a dissenting Minister, and the Rev. Mr. Homo, a near Relation of the Earl of Homo. The Lord Balmerino was attended by two Ministers of the Church of England. While Lord Kilmarnock was in the Room, where he continued an Hour and an Half, he spent most of the Time in Prayer, and behayed himself in a Manner suitable to his unhappy Circumstances. While he was thus employ'd, turning himself to Mr. Foster, he whisper'd something to him ; upon which Mr. Foster declar'd to the Company then present, that my Lord Kilmarnock desired it should be known, that he died a Member of the Church of England ; that he acknowledged King George for his lawful Sovereign, and was very sorry for the Offence he had been guilty of ; that he had writ down in a Paper every Thing that he had to say, and had given it to him to be published, the Purport of which we have before inserted.

His Lordship then spent a few Moments in conversing with his Friends, and having refreshed himself with a Bit of Bread and a Glass of Wine, he declared to the Sheriffs, *That he had within this three Weeks taken the Sacrament twice, in Evidence of the Truth of his Repentance.*

About eleven o'Clock my Lord sent a Message to my Lord Balmerino, desiring an Interview with his Lordship, which being consented to, my Lord

*Balmerino was then introduced into the Earl of Kilmarnock's Apartment; where my Lord Balmerino, after addressing himself to his Lordship, and thanking him for the Favour of this Conference, ask'd his Lordship, If he knew of any Order being made before the Battle of Culloden, for giving no Quarter to the Duke's Army, at the same Time declaring, That he himself knew nothing of any such Order, but that since the Battle of Culloden, he had been informed that there was some Order to that Effect, signed George Murray, and that it fell into the Hands of the Duke, immediately after the Battle.* The Earl of Kilmarnock and Lord Balmerino having then saluted each other, my Lord Balmerino bid my Lord Kilmarnock an eternal happy Adieu, and with a cheerful Countenance added, *My dear Lord, I wish I cou'd alone pay the Reckoning, and suffer for us both;* and on leaving the Room, just at his going out at the Door, the Lord Balmerino said, *The Lord be with you for ever,* and then retired into his own Room.

After Lord Balmerino had left the Room, Lord Kilmarnock declar'd, that with Regard to the Battle of Culloden, he really believ'd that the Victory obtain'd by the King's Troops, was entirely owing to the Courage and Conduct of the Duke of Cumberland.

Soon after this, his Lordship enquired, which of them was to go to the Scaffold first, the Lord Balmerino or himself? Saying, that he should be very well satisfied if my Lord Balmerino was to go first: But being inform'd, that that could not be, his Lordship being first in the Warrant, he seem'd very compos'd, and it being then near twelve o'Clock, he went to Prayers, the Company that were in the Room joining with him. His Lordship then rising from his Knees, eat a Bit of Bread, and drank a Glass of Wine, and said, that he should make no Speech upon the Scaffold, having nothing more to declare than what he had before said; and desired the two Ministers, and his Friends then present, to assist him in his last Moments on the Scaffold, which they did accordingly.

When he came upon the Scaffold, he utter'd a few private Ejaculations, and then prepar'd himself for the Block; spoke a few Words to the Ministers, and a Friend or two that attended him; then pull'd off his Coat and Neckcloath, and put on a White Cap; and after giving the Executioner a green Purse with five Guineas in it, the Executioner ask'd

him,

him, what Signal his Lordship would please to give when he should strike the Blow ? His Lordship answer'd, *When I drop my Handkerchief.* Then his Lordship laid down his Head on the Block to see how he was to lie ; and getting up again, pull'd off his Waistcoat, and looking round him, took his last Farewel of the Ministers and his Friends, and uttered these Words, *I find myself perfectly easy and compos'd*, and laid himself down again several Times ; at length throwing his Handkerchief from him, the Executioner sever'd his Head from his Body at two Blows. His Lordship had behav'd all along with a great deal of Calmness and Serenity ; yet in his last Moments could not help discovering some Tokens of Fear. His Lordship was dress'd in a Suit of Black, as at his Trial.

As soon as the Executioner had done his Office, the Head was put into a Piece of scarlet Bays, which was brought for that Purpose, and laid with his Body in the Coffin, which stood upon the Stage ; and being nail'd down, it was carried to a Hearse that stood ready to receive it ; and the same Afternoon was interr'd in the Chapel in the Tower.

When Lord *Balmerino* came up to the Door of the House in which he and the Earl of *Kilmarnock* were to be before their Execution, some Gentlemen, who were Spectators, were saying one to another, which is Lord *Balmerino* ? and Lord *Balmerino* hearing them, said smiling, *I am Lord Balmerino, Gentlemen, at your Service.*

Lord *Balmerino*, while he was in his Room in the House, told the Gentlemen in his Company, that he should say nothing then, having prepar'd a Speech which he intended to read publickly when he came upon the Scaffold. The under Sheriff that attended during the first Execution coming to my Lord *Balmerino*'s Apartments, as a Notice to his Lordship that his Time was come ; his Lordship said, *I suppose my Lord Kilmarnock is no more* ; and having ask'd how the Executioner had performed his Duty, his Lordship upon receiving the Account, said, *then it was well done* ; and now Gentlemen, *I am ready* : His Lordship then saluted the Company in a Manner so cheerful as drew Tears from every Eye but his own, and hastened to the Scaffold.

But before we view his Lordship upon the Scaffold, 'tis but just to the Memory of that unhappy Man, to acquaint the Publick what was his Deportment in his Retirement here :

here : 'Twas Graceful without Affectation, Cheerful but not Presumptuous, he conyered freely with his Friends, and twice refreshed himself with a bit of Bread and a Glass of Wine ; but, above all, he called frequently upon God, and seemed both willing and prepared to die.

When his Lordship mounted the Scaffold, he did it with so undaunted a Step as surpriz'd every Spectator. His Lordship appeared there in the same Regimentals he wore at the Battle of Culloden, and so far was he from having the least Concern himself at the Fear of Death, that he frequently reproved his Friends that were about him for shewing any : His Lordship walk'd round the Scaffold, bow'd to the People, and with seeming Pleasure look'd at the Block, which he called his *Pillow of Rest*.

The next Thing he did was, he look'd upon his Coffin, then took his Hat off and laid it thereon, and untying his Neckcloth threw that also on his Coffin, then he pull'd out his Spectacles, put them on, and taking a Paper out of his Pocket, read it over as loud as he could to the People on the Stage ; the Purport of the Paper was, that he acknowledged that both himself and Lord Kilmarnock commanded each of them a Troop of Guards in the Pretender's Army ; complain'd much of a certain great Officer in the Tower, for his ill Usage towards him, and that if he had not received the Holy Eucharist the Day before, and read several of the *Psalms*, he should not have forgiven him ; but as it was, he died in Charity with him ; that he thank'd Major White of the Tower, for his courteous and kind Usage to him, and then speaking of the Rebellion, he us'd the most vile Expressions, reflecting on his Royal Highness the Duke ; said, that what he did, was partly for Pay, and partly from Principle, for he acknowledg'd no other for his Prince, but him they call the Pretender, and justify'd the Action he died for ; with other Treasonable Expressions not fit to be published ; and then deliver'd the Paper into the Hands of Mr. Sheriff Cockayne.

Then he prepar'd himself for the Block. First he pull'd off his Wigg, and put on a red Plaid Cap, then pull'd off his Coat, and appear'd in a white Waistcoat, and was going to lay his Head down on the contrary Side of the Block, when he was told he was wrong, upon which he came round on the other Side, and gave the Executioner three Guineas ; and kneeling down, and laying his Head on the Block, the Executioner desired his Lordship to rise, because  
the

the Collar of his Waistcoat would be in the Way ; upon which his Lordship got up and pull'd it off ; having a Shroud made in the Fashion of a Shirt. The Executioner then ask'd what Signal his Lordship would give when he should strike the Blow, he answer'd, *When I drop my Arms, do you do your Execution* ; which doing in a Minute, the Executioner struck off his Head at three Blows, and occasion'd as great an Effusion of Blood as was ever known from one Person.

His Head was taken up and put in a red Cloth, and laid with his Body in his Coffin, and being put in a Hearse was carried to the Chapel of the Tower, and laid upon the Coffin of Lord Tullibardin, and all the three Lords lie in the same Grave.

It was observ'd of my Lord Balmerino, that he was a Man of the most undaunted Courage ; and look'd Death in the Face with as much Unconcern as if he had been talking with an Acquaintance. And his Behaviour, from his Conviction to the last Moment of his Life, was entirely consistent, and never alter'd from the most intrepid Boldness : which he shew'd even in his going from the Tower to the House on the Hill, smiling all the Way at the Crouds of People that were every where round him.

Lord Balmtrino to the last protested his intire Ignorance as to the Order for giving no Quarter to the Duke's Army, and added, *That he would not knowingly have acted under such an Order, because he should have looked upon it as Unmilitary, and beneath the Character of a Soldier.*

Before we conclude this Account of Lord Balmerino, we think it necessary to add, that when his Lordship was on the Stage, and had look'd upon his Coffin, he went briskly to one Side of the Stage where the Hearses stood on the Hill, asking which was for him ; then turned to the Executioner, and desired to see the Ax, which he accordingly shew'd him, and Lord Balmerino took it in his Hand, and put his Thumb to the Edge to feel how sharp it was, and then gave it the Executioner again ; and this, as well as every Thing else he had done the Day of his Execution, was without any seeming Fear, but bold and resolute.

At their Interment, Mr. Humpbreys, Curate of the Chapel in the Tower read the Service ; and on pronouncing that Part of it, where it says, *Ashes to Ashes, Dust to Dust,* two Gentlemen, Friends of the Deceased, took up the Spades, and perform'd that Part of the Office instead of the Grave Diggers.

Lord

*Lord Balsorino* was 58 Years of Age, and the Earl of *Kilmarnock* 42.

The Heads of the faid Lords were not held up and expos'd after Execution by the Executioner, as has frequently been the Case, for as the Law does not require it, and the unhappy Lords desiring it might not be so, their Request was comply'd with.

The Lieutenant of the Tower, at the Time that he deliver'd the Earl of *Kilmarnock* at the Gates on *Tower Hill*, informed Mr. Sheriff *Blatchford*, that he must not have the Stage pull'd down, for that *be bad receiv'd Orders* it must be kept standing; but the Mob the same Night pulled it down, and stole away the Boards.

## F I N I S.

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